

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



April 2, 1992

ALL COUNTY LETTER NO. 92-37

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: IMPLEMENTATION OF THE ORDER IN FLAMINIO VS. MC MAHON

REFERENCES: ACL 89-50

The purpose of this letter is to instruct County Welfare Departments (CWDs) to implement the terms of the Stipulation and Judgement in the Flaminio v. McMahon Court case (Superior Court for the County of San Diego Case No. 631866). The Flaminio Judgement requires the State Department of Social Services to issue an All County Letter "instructing all County Welfare Departments to immediately cease assessment or collection of any overpayments based on the receipt of any Adoption Assistance [payments] during the period of the Simon injunction." The Simon injunction period was October 1985 through November 1989. The Simon injunction had permitted Assistance Units the option to exclude a child and his/her income and/or resources from eligibility calculations.

The Flaminio Court order "does not mean that an Assistance Unit whose Adoption Assistance payment was counted as income during the period of the Simon injunction can claim it is now entitled to a reimbursement in the form of a corrective underpayment."

Since the Flaminio Order only requires that the specified overpayment assessment and recoupment cease, no retroactivity is required.

Attached for your information is a copy of the Flaminio Order. If there are any questions regarding the Flaminio Judgement, please call Mr. Vincent Toolan, AFDC Policy Implementation Bureau, at (916) 654-1808.

A handwritten signature in dark ink, appearing to read "MICHAEL C. GENEST", is positioned above the typed name.

MICHAEL C. GENEST, Deputy Director
Welfare Program Division

Attachment

1 JAMES WILLIAM BRACE, CA BAR #12345
2 ARSON B. LITIAN, CA BAR #12345
3 ROSEMARY BISHOP, CA BAR #12345
4 LEGAL AID SOCIETY OF SAN DIEGO, INC.
5 110 South Euclid Avenue
6 San Diego, CA 92114
7 (619) 592-5557, ext. 138

FILED
CLERK OF THE SUPERIOR COURT
SAN DIEGO, CALIF.

OCT - 9 1991

Attorneys for Petitioners, Plaintiffs

By A. HUNTER, Deput

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

10 KATHLEEN FLAMINIO, on behalf of)	CASE NO. 631866
11 herself and all others similarly)	
12 situated,)	
13)	
14 Petitioners/Plaintiffs,)	STIPULATION FOR
15)	JUDGMENT
16 v.)	
17)	
18 LINDA McMAHON, Director,)	
19 Department of Social Services)	
20 of the State of California, in)	
21 her official capacity,)	
22)	
23 Respondent/Defendant.)	
24)	

25 The parties to the above action hereby stipulate and agree
26 as follows:

27 1. Respondent shall set aside Kathleen Flaminio's
28 overpayment of \$1,525.00. Any money already collected through
29 any means, including the tax intercept program, shall be returned
30 to Ms. Flaminio. Any amount of the overpayment yet uncollected
31 will cease to be considered a debt.

32 2. Respondent shall issue within one hundred twenty days
33 (120) an All County Letter (ACL) instructing all County Welfare
34 Departments to immediately cease assessment or collection of any
35 overpayments based on the receipt of any adoption assistance

1 during the period of the Simon injunction.

2 3. This agreement, however, does not mean that an
3 assistance unit whose adoption assistance was counted as income
4 during the period of the Simon injunction can claim it is now
5 entitled to a reimbursement in the form of a corrective
6 underpayment.

7 4. This settlement is not, nor shall it be construed, as
8 either an admission or concession by respondent that its
9 regulations concerning the inclusion of adoption assistance as
10 income prior to ACL 90-101 was somehow incorrect or not in
11 compliance with federal law.

12 5. Respondents shall pay to petitioners' counsel within
13 sixty (60) days from judgment, the sum of \$5,000.00 (representing
14 40 hours at \$125.00 an hour) in attorneys' fees as full and final
15 settlement of all costs and attorneys' fees arising from this
16 claim. If said sum is not paid to petitioner's counsel by
17 December 31, 1991, respondent shall pay both the attorney's fees
18 plus interest at the rate of ten percent (10%) per annum.

19 Respectfully submitted,

20 LEGAL AID SOCIETY OF SAN DIEGO, INC.

21
22 DATED: 10/9/91

23 By

Carol Ratsamy Bracy

CAROL RATSAMY BRACY

ANSON B. LEVITAN

ROSEMARY BISHOP

Attorneys for Petitioners/Plaintiffs

25 DANIEL E. LUNGREN
26 ATTORNEY GENERAL

27 By

Bill P. Ingram

BILL P. INGRAM

Deputy Attorney General

Attorneys for Respondent/Defendant

PROOF OF SERVICE BY MAIL
(Business Practice Deposit to Others)
(CCP § 1013a(3))
SAN DIEGO SUPERIOR COURT CASE NO. 631866
Flaminio v. McMahon

Mary B. Walsh certifies and declares as follows:
I am over the age of 18 years, and not a party to this action.
My business address is: Legal Aid Society of San Diego, Inc., 110 South Euclid Avenue, San Diego, CA 92114, which is located in the county where the mailing described below took place. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.
On October 16, 1991, at my place of business at Legal Aid Society of San Diego, Inc., I served Linda McMahon, the Respondent/Defendant in the above-entitled case, by placing a true copy of the following document(s): STIPULATION FOR JUDGMENT and JUDGMENT, in an envelope addressed to: MS. JILL INGRAM, DEPUTY ATTORNEY GENERAL, 110 W. "A" Street, Suite 700, San Diego, CA 92101, Telephone No. (619) 237-7351, who is the attorney of record for said party, and which envelope was then sealed and placed for deposit in the United States Postal Service with postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated on: October 16, 1991

Mary B. Walsh
(Signature)

F KENNETH E. MARIONE
Clerk of the Superior Court
OCT - 9 1991
By A HINTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

KATHLEEN FLAMINIO, on behalf of)	CASE NO. 631866
herself and all others similarly)	
situated,)	JUDGMENT PURSUANT TO
)	STIPULATION
Petitioners/Plaintiffs,)	
)	
v.)	
)	
LINDA McMAHON, Director,)	
Department of Social Services)	
of the State of California,)	
in her official capacity,)	
)	
Respondent/Defendant.)	

This matter coming before the Court on the parties' Stipulation for Judgment, which is filed herewith, and the terms of which are incorporated herein,

IT IS HEREBY ORDERED that the parties shall comply with the terms set forth therein.

Dated: OCT - 9 1991

ROBERT J. O'NEILL

ROBERT O'NEILL
JUDGE OF THE SUPERIOR COURT